



U.S. Department of Housing and Urban Development

Public and Indian Housing

Special Attention of:

## Notice PIH 97-19 (HA)

HAs with Section 8 Moderate  
Rehabilitation; Secretary's  
Representatives; State and Area  
Office Directors of Public Housing;  
Administrators, Area Offices of  
Native American Programs

Issued: 04/22/97

Expires: **09/30/97**

Cross References:

**Subject:** Clarification of PIH Notice 96-95 Governing FY 97 Renewal of Expiring Section 8 Moderate Rehabilitation Housing Assistance Payments (HAP) Contracts.

1. **PURPOSE:** This Notice supplements and clarifies the procedures outlined in Notice PIH 96-95, dated December 24, 1996. Notice PIH 96-95 provides instructions for implementing Section 211 (b) of the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1997 (FY 97 Appropriations Act) governing the renewal of housing assistance payments (HAP) contracts under the Section 8 moderate rehabilitation (Mod Rehab) program.

2. **BACKGROUND:** Prior to FY 97, expiring Mod Rehab HAP contracts were not renewed. Instead, funding for replacement rental certificates (or rental vouchers if approved by HUD) was provided for the tenants. The FY 97 Appropriations Act was enacted on September 26, 1996, as Public Law 104-204. Section 211 (b)(1) requires that upon the request of the owner of a multifamily housing project that is covered by an expiring contract, the Secretary shall renew the expiring contract as project-based assistance for a period of not more than 1 year at rent levels that are equal to those under the expiring contract as of the date the contract expires, provided those rent levels do not exceed 120 percent of the fair market rent for the market area in which the project is located.

3. **APPLICABILITY:** This Notice applies to all units in a multifamily housing project (including FHA-insured multifamily housing projects) under a Section 8 Mod Rehab HAP contract expiring during the period from October 1, 1996 through September 30, 1997. The term "multifamily housing project" means a property consisting of more than 4 dwelling units that is covered in whole or in part by a contract for project-based assistance under Section 8 of the United States Housing Act of 1937.

PH : Distribution:

HUD 21B (3-80)

#### **4. UNITS THAT BECOME VACANT DURING THE ONE-YEAR HAP CONTRACT**

**RENEWAL TERM:** Owners may fill units covered by the Mod Rehab renewal HAP contract that become vacant during the one-year renewal term with eligible tenants referred by the HA. The lease must terminate on the date the Mod Rehab renewal HAP contract expires. At the Section 8 briefing, the HA must inform a family that chooses to rent a Mod Rehab unit with a HAP contract that will expire in less than one year that the project-based assistance will end if the HAP contract is not renewed. When the Mod Rehab HAP contract ends, eligible families will be offered tenant-based rental assistance.

**5. VACANCY PAYMENTS:** In some cases, Mod Rehab HAP contracts expired prior to the issuance of Notice PIH 96-95. Notice PIH 96-95 did not address an owner's right to request a vacancy payment in the event that an owner's unit was vacant at the time the owner was notified of the right to renew. In cases where a Mod Rehab HAP contract expired prior to the HA's notification to the owner of the right to a one year HAP contract renewal, and where some or all of the former Mod Rehab units were vacant at the time the owner notifies the HA of the owner's intention to renew, the owner is entitled to vacancy payments, if requested, in accordance with 24 CFR section 882.411(b).

**Example:** a Mod Rehab HAP contract expired October 15, 1996 and some of the units have **remained** vacant since the former Mod Rehab families vacated the units on October 15, 1996. The owner was notified of the right to a Mod Rehab HAP contract renewal on January 2, 1997 and the owner has informed the HA of the owner's decision to renew. If the owner requests, the owner is entitled to the HAP on the vacant units for as much of the month of October as the units were vacant and 80% of the contract rent for the month of November. In a case such as the one described above, the requirement contained in §882.411(b)(i) that requires the owner to immediately notify the HA of the vacancy in order to be entitled to a vacancy payment does not apply.

If the owner reoccupies the former Mod Rehab unit before the Mod Rehab renewal contract has been executed, the owner is not entitled to a vacancy payment on that unit.

The Mod Rehab renewal HAP contract must be made effective the day after the original Mod Rehab HAP contract expiration date.

**6. UNITS RENTED ON THE PRIVATE MARKET:** In cases where Mod Rehab HAP contracts expired prior to receipt of Notice PIH 96-95 and where owners have leased former Mod Rehab units to market rate tenants or Section 8 income eligible tenants prior to the execution of the Mod Rehab renewal contract, such units are not eligible for a Mod Rehab HAP contract renewal. Instead, the HA must not include these units in the renewal HAP contract.

**7. ELIGIBLE PROJECTS:** Section 211 (b)(1) of the FY '97 Appropriations Act provides that

owners of multi-family housing projects (including FHA-insured multifamily housing projects) under a Section 8 Mod Rehab HAP contract expiring during the period from October 1, 1996 through September 30, 1997 are eligible for a one year Mod Rehab HAP contract renewal. The term "multifamily housing project" means a property consisting of more than 4 dwelling units that is covered in whole or in part by a contract for project-based assistance under Section 8 of the United States Housing Act of 1937. HUD will only offer to renew HAP contracts for Mod Rehab units that are located in properties with five or more units.

**Example:** An owner owns a property with five dwelling units that qualifies under the statutory definition of a multi-family housing project. The owner of the property has a Mod Rehab HAP contract which covers three of the 5 dwelling units on his property. The project is eligible (if all other requirements of Notice PIH 96-95 are met) for a one year HAP contract renewal. In this example, the owner is eligible because he owns a multi-family housing project (a property consisting of more than 4 dwelling units) and the property is covered in part by a contract for project-based assistance under Section 8 of the United States Housing Act of 1937.

A multi-family housing project is defined as a property that is on either a single site or a single contiguous site with residential structures that share some common ground and are under common ownership.

**Example:** A property consists of four separate buildings that are all located on the same common site and part of a single apartment complex. There are four units in each building and some or all of the units are covered by an expiring Mod Rehab HAP contract. Any of the sixteen units covered by an expiring Mod Rehab HAP contract are eligible for a one year Mod Rehab HAP contract renewal (if all other requirements of Notice PIH 96-95 are met). The apartment complex is considered one property and there are more than four units in the property.

#### **8. RENTAL CERTIFICATE CONTRACTS EXECUTED ON FORMER MOD REHAB UNITS:**

Section 8 eligible families living in units under an expiring Mod Rehab HAP contract where the owner chooses not to renew the Mod Rehab HAP contract or where the owner is ineligible for renewal will be offered Section 8 tenant-based certificates. If the family chooses to use its rental certificate at the former Mod Rehab unit and the owner agrees to rent the unit to the family under the rental certificate program, the unit must meet all requirements of the Section 8 rental certificate program (including rent reasonableness) before an HA may grant lease approval and execute a rental certificate HAP contract on the unit (see §982.304). If the unit does not meet Housing Quality Standards (HQS), the HA shall not execute a certificate HAP contract on

the unit until the owner brings the unit into compliance with HQS requirements. The unit must comply with HQS before the beginning of the lease term.

Section 8(c)(9) of the United States Housing Act of 1937 requires Section 8 Mod Rehab owners to provide written notice to HUD and each family not less than one year before the expiration of the HAP contract (see PIH Notice 96-95 for further details). If the owner failed to provide the statutorily required notice, the family is protected as if there were an assisted tenancy until one year from the time the owner actually provides the notice. During this period, the family is only required to pay the tenant rent as determined at the last HA reexamination.

9. **FAMILY SELF-SUFFICIENCY (FSS) REQUIREMENTS:** If a Mod Rehab HAP contract expires and it is not renewed because the owner is not eligible or has chosen not to request a one year Mod Rehab HAP contract renewal, HUD will provide HAs with Section 8 rental certificate replacement funding. Section 8 rental certificate funding provided for this purpose does not increase an HA's FSS minimum program size.

/s/

Kevin Emanuel Marchman, Acting  
Assistant Secretary for Public  
and Indian Housing